Council of the European Union

Brussels, 27 January 2023
(OR. en)

5770/23

Interinstitutional File: 2022/0402(CNS)

JUSTCIV 9
FREMP 15
JAI 78
IA 5

NOTE

From:	General Secretariat of the Council
To:	Delegations
No. Cion doc.:	15837/22 + ADD1 + ADD2 + ADD3 + ADD4 + ADD5
Subject:	Proposal for a Council Regulation on jurisdiction, applicable law, recognition of decisions and acceptance of authentic instruments in matters of parenthood and on the creation of a European Certificate of Parenthood - Opinion of the EDPS

Delegations will find in annex the opinion of the EDPS on the proposal for a Council Regulation on jurisdiction, applicable law, recognition of decisions and acceptance of authentic instruments in matters of parenthood and on the creation of a European Certificate of Parenthood.


E-MAIL
EDPS
IN 001318 2023
27.01.2023
Reçu le
26. 01. 2023
EUROPEAN
DATA
PROTECTION
SUPERVISOR
The EU's independent data protection authority
26/01/2023
Opinion 2/2023
on the Proposal for a Council Regulation in matters of parenthood
edps.europa.eu

The European Data Protection Supervisor (EDPS) is an independent institution of the EU, responsible under Article 52(2) of Regulation 2018/1725 'With respect to the processing of personal data... for ensuring that the fundamental rights and freedoms of natural persons, and in particular their right to data protection, are respected by Union institutions and bodies', and under Article 52(3)'...for advising Union institutions and bodies and data subjects on all matters concerning the processing of personal data'.

Wojciech Rafał Wiewiórowski was appointed as Supervisor on 5 December 2019 for a term of five years.

Under ***Article 42(1)*** *of Regulation 2018/1725, the Commission shall 'following the adoption of proposals for a legislative act, of recommendations or of proposals to the Council pursuant to Article 218 TFEU or when preparing delegated acts or implementing acts, consult the EDPS where there is an impact on the protection of individuals' rights and freedoms with regard to the processing of personal data'.*

This Opinion relates to the Proposal for a Council Regulation on jurisdiction, applicable law, recognition of decisions and acceptance of authentic instruments in matters of parenthood and on the creation of a European Certificate of Parenthood (COM/2022/695 final). This Opinion does not preclude any future additional comments or recommendations by the EDPS, in particular if further issues are identified or new information becomes available. Furthermore, this Opinion is without prejudice to any future action that may be taken by the EDPS in the exercise of his powers pursuant to Regulation (EU) 2018/1725. This Opinion is limited to the provisions of the Proposal that are relevant from a data protection perspective.

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Executive Summary

On 7 December 2022, the European Commission issued a Proposal for a Council Regulation on jurisdiction, applicable law, recognition of decisions and acceptance of authentic instruments in matters of parenthood and on the creation of a European Certificate of Parenthood.

The objective of the Proposal is to lay down common rules on jurisdiction and applicable law for the establishment of parenthood in a Member State in cross-border situations; common rules for the recognition or, as the case may be, acceptance in a Member State of court decisions on parenthood given, and authentic instruments on parenthood drawn up or registered, in another Member State; and create a European Certificate of Parenthood.

The EDPS welcomes the clear references made to the application of the GDPR, the EUDPR and the e-Privacy Directive as well as the determination of the controllership regarding the processing of personal data for the purposes of the Proposal and the clarification provided regarding the processing of special categories of personal data.

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THE EUROPEAN DATA PROTECTION SUPERVISOR,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 2018/1725 of the European Parliament and of the Council of 23 October2018 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ('EUDPR')[1], and in particular Article 42(1) thereof,

HAS ADOPTED THE FOLLOWING OPINION:

1. Introduction

1. On 7 December 2022, the European Commission issued a Proposal for a Council Regulation on jurisdiction, applicable law, recognition of decisions and acceptance of authentic instruments in matters of parenthood and on the creation of a European Certificate of Parenthood ('the Proposal')[2].

2. The objective of the Proposal is to 'lay down common rules on jurisdiction and applicable law for the establishment of parenthood in a Member State in cross-border situations; common rules for the recognition or, as the case may be, acceptance in a Member State of court decisions on parenthood given, and authentic instruments on parenthood drawn up or registered, in another Member State' and to create a European Certificate of Parenthood[3].

3. This initiative was identified as a key action in the EU Strategy on the rights of the child[4] and in the EU LGBTIQ Equality Strategy[5].

4. The present Opinion of the EDPS is issued in response to a consultation by the European Commission of 12 December 2022, pursuant to Article 42(1) EUDPR. The EDPS welcomes the reference to this consultation in recital 96 of the Proposal. In this regard, the EDPS also positively notes that he was already previously informally consulted pursuant to recital 60 EUDPR.

[1] OJ L 295, 21.11.2018, p. 39.
[2] COM(2022) 695 final.
[3] Article 1.
[4] EU Strategy on the rights of the child, COM(2021) 142 final.
[5] Union of Equality: LGBTIQ Equality Strategy 2020-2025, COM(2020) 698 final. See explanatory memorandum, page 2.

2. General remarks

5. The EDPS welcomes the reference in recital 91 to Regulation (EU) 2016/679[6] ('the GDPR'), to the EUDPR and to Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications)[7]. He also welcomes recital 92 clarifying the purposes for which personal data may be processed in the context of Proposal.

6. The EDPS positively notes the determination of the controllership regarding the processing of personal data in Article 68 and recital 95 of the Proposal according to which, Member State courts or other competent authorities are to be regarded as data controllers within the meaning of Article 4(7) of the GDPR, for the purposes of the establishment of parenthood in a cross-border situation, the issuance of the attestations accompanying court decisions or authentic instruments, of a European Certificate of Parenthood, the presentation of documents for the recognition of parenthood, the obtaining of a decision that there are no grounds for refusal of recognition of parenthood, or the application for refusal of recognition of parenthood, on the one hand, and, on the other hand, the Commission is to be regarded as controller within the meaning of Article 3(8) of the EUDPR, for the purposes of the technical management, development, maintenance, security and support of the European electronic access point, and of the communication between natural persons or their legal representatives and Member State courts or other competent authorities through the European electronic access point and the decentralised IT system.

7. The EDPS welcomes recital 93 of the Proposal, clarifying that the processing of special categories of personal data under the proposed Regulation meets the requirements of Articles 9(2) GDPR and 10(2) EUDPR as the processing activities would take place in conformity with Article 9(2) (f) or (g) GDPR or Article 10(2)(f) or (g) EUDPR. In that regard, the EDPS would like to point out that the CJEU in its recent judgment[8] concluded that the processing of personal data that are liable indirectly to reveal sensitive information concerning a natural person, such as disclosing indirectly their sexual orientation, constitutes processing of special categories of data, for the purpose of Article 9(1) GDPR.

8. The EDPS would like to recall that the GDPR and the EUDPR in principle prohibit the processing of such categories of personal data except where the processing takes place in accordance with Article 9(2) GDPR or Article 10(2) EUDPR. Even in the cases covered under Article 9(2)(f) and (g) GDPR or 10(2)(f) or (g) EUDPR, the processing of such categories of personal data has to be necessary for the establishment, exercise or defence of legal claims or whenever courts are acting in their judicial capacity or necessary for reasons of substantial public interest and with regard to the latter, such processing must be on the basis of Union or Member State law, which must be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject.

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[6] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

[7] OJ L 201, 31.7.2002, p. 37.

[8] Judgment of the Court of Justice of 1 August 2022, OT a.o., C-184/20, ECLI:EU:C:2022:601, paragraphs 120-128.

3. Conclusions

9. In light of the above, the EDPS has no further comments on the Proposal.

Brussels, 26 January 2023

(e-signed)
Wojciech Rafał WIEWIÓROWSKI